

*B1*  
32. (new) The method recited in Claim 8 wherein said selecting to allow modifying a transmission rate of said signal over said wireless communications network is based on a priority status of said data.

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#### REMARKS/ARGUMENTS

The Applicants originally submitted Claims 1-21 in the application. In a preliminary amendment, the Applicants added Claims 22-30. In the present response, the Applicants have amended Claims 1-2, 8-9, 15-16, 22 and 24. Additionally, the Applicants have canceled Claim 23 without prejudice or disclaimer and added Claims 31-32. Accordingly, Claims 1-32 are currently pending in the application.

#### **I. Rejection of Claims 1-6, 8-13 and 15-20 under 35 U.S.C. §102**

The Examiner has rejected Claims 1-6, 8-13 and 15-20 under 35 U.S.C. §102(e) as being anticipated by US Patent No. 6,141,546 to Thomas, *et al.* (Thomas). The Applicants respectfully disagree.

Thomas does not teach a controller for use with a transceiver that transmits and receives wireless data including a selection system configured to select one of at least two channels in accordance with channel information based on a characteristic associated with the two channels allowing the controller to modify a transmission rate of the data over a wireless communications network. (Claims 1, 8 and 15). Thomas is directed to cellular mobile telephone systems and the monitoring and assignment of frequency channels in such systems. (Column 1, lines 1-5). Thomas teaches a mobile cellular telephone that monitors many frequency channels for signal quality and

maintains an internal frequency quality list of some of the channels. A suitable frequency is selected from the list for subsequent communication. (Column 6, lines 4-20).

The mobile cellular telephone of Thomas does not include a controller that selects one of the frequency channels to allow the controller to modify a transmission rate of the data as recited in Claims 1, 8 and 15. Instead, a single frequency channel is selected to provide cellular communication with a base station based on signal quality. The Applicants do not find where Thomas teaches selecting a channel allowing modification of a transmission rate of data as claimed in the present invention.

Thomas, therefore, does not teach each and every element of independent Claims 1, 8 and 15 and Claims dependent thereon. Accordingly, Thomas does not anticipate Claims 1-6, 8-13 and 15-20. Accordingly, the Applicants respectfully request the Examiner to withdraw the §102 rejection with respect to Claims 1-6, 8-13 and 15-20 and allow issuance thereof.

Additionally, specifically addressing dependent Claims 3, 10 and 17, the Applicants do not find where Thomas teaches a wireless local area network. On the contrary, Thomas appears to specifically address cellular communication between mobile cellular telephones and base stations. Thus, Thomas does not teach the additional elements recited in dependent Claims 3, 10 and 17

## **II. Rejection of Claims 22-24, 28 and 30 under 35 U.S.C. §102**

The Examiner has rejected Claims 22-24, 28 and 30 under 35 U.S.C. §102(e) as being anticipated by US Patent No. 6,122,291 to Robinson, *et al.* (Robinson). The Applicants respectfully disagree.

Robinson is directed to allocating bandwidth for reception or transmission of information over a communication resource of a communications system. (Column 1, lines 5-9). Robinson does not teach transmitting data across a communications network having multiple channels including establishing a bandwidth for transmission of the data and selecting at least one channel from the multiple channels based on a priority status of the data and transmitting the data over the selected as least one channel as recited in Claim 22. On the contrary, Robinson modifies a bandwidth in proportion to a demand on communications resources. (Column 2, lines 1-14). Thus, instead of selecting a channel based on priority status of data, Robinson dynamically varies the bandwidth used for data transfer in response to a demand. (Column 7, lines 28-35).

Robinson, therefore, does not teach each and every element of independent Claim 22 and Claims dependent thereon. Accordingly, Robinson does not anticipate Claims 22, 24, 28 and 30. Accordingly, the Applicants respectfully request the Examiner to withdraw the §102 rejection with respect to Claims 22, 24, 28 and 30 and allow issuance thereof.

### **III. Rejection of Claims 25-27 under 35 U.S.C. §103**

The Examiner has rejected Claims 25-27 under 35 U.S.C. §103(a) as being unpatentable over Robinson in view of US Patent No. 6,122,291 to Frodigh, *et al.* (Frodigh). The Applicants respectfully disagree.

As discussed above, Robinson does not teach each and every element of independent Claim 22. Furthermore, Robinson does not suggest each and every element of Claim 22 since Robinson is directed to altering bandwidth to accommodate demands on communication resources.

Accordingly, one skilled in the art would not be motivated from the teachings of Robinson to arrive at the present invention.

Frodigh was not cited to cure the deficiencies of Robinson but to teach the subject matter of dependent Claims 25-27. The cited combination of Robinson and Frodigh, therefore, does not teach or suggest each and every element of independent Claim 22 and does not provide a *prima facie* case of obviousness of Claims 25-27 which depend thereon. Claims 25-27, therefore, are not unpatentable over the cited combination of Robinson in view of Frodigh. Accordingly, the Applicants respectfully request the Examiner withdraw the §103(a) rejection of Claims 25-27 and allow issuance thereof.

#### **IV. Rejection of Claim 29 under 35 U.S.C. §103**

The Examiner has rejected Claim 29 under 35 U.S.C. §103(a) as being unpatentable over Robinson in view of US Patent No. 6,122,291 to Felix, *et al.* (Felix). The Applicants respectfully disagree.

As discussed above, Robinson does not teach or suggest each and every element of independent Claim 22. Felix was not cited to cure the deficiencies of Robinson but to teach the subject matter of dependent Claim 29. The cited combination of Robinson and Felix, therefore, does not teach or suggest each and every element of independent Claim 22 and does not provide a *prima facie* case of obviousness of Claim 29 which depends thereon. Claim 29, therefore, is not unpatentable over the cited combination of Robinson and Felix. Accordingly, the Applicants respectfully request the Examiner withdraw the §103(a) rejection of Claim 29 and allow issuance thereof.

**V. Rejection of Claims 7, 14 and 21 under 35 U.S.C. §103**

The Examiner has rejected Claims 7, 14 and 21 under 35 U.S.C. §103(a) as being unpatentable over Thomas. The Applicants respectfully disagree.

As discussed above, Thomas does not teach each and every element of independent Claims 1, 8 and 15. Furthermore, Thomas does not suggest each and every element of Claims 1, 8 and 15 since Thomas is directed to improving system quality and capacity in a mobile cellular communications system. Accordingly, one skilled in the art would not be motivated from the teachings of Thomas to arrive at the present invention.

Thomas, therefore, does not teach or suggest each and every element of independent Claims 1, 8 and 15 and does not provide a *prima facie* case of obviousness of Claims 7, 14 and 21 which depend thereon. Claims 7, 14 and 21, therefore, are not unpatentable over Thomas. Accordingly, the Applicants respectfully request the Examiner withdraw the §103(a) rejection of Claims 7, 14 and 21 and allow issuance thereof.

**VI. Comment on Cited References**

The Applicants reserve further review of the references cited but not relied upon if relied upon in the future.

## VII. Conclusion

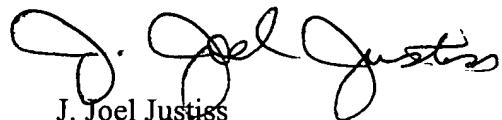
In view of the foregoing amendment and remarks, the Applicants now see all of the Claims currently pending in this application to be in condition for allowance and therefore earnestly solicit a Notice of Allowance for Claims 1-22, 24-32.

Our check in the sum of \$420.00 is included for the extension of time fee, however, the Commissioner is hereby authorized to charge any additional fees connected with this communication to Deposit Account No. 08-2395.

The Applicants request the Examiner to telephone the undersigned attorney of record at (972) 480-8800 if such would further or expedite the prosecution of the present application.

Respectfully submitted,

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